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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/624,792

07/22/2003

Aldo Marra

126.01

7448

7590

10/06/2006

Daniel P. Maguire
1124 Bucknell Drive
Davis, CA. 95616

EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT

PAPER NUMBER

3676

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,792

Applicant(s)

MARRA ET AL.

Examiner

Gary Estremsky

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 11 is/are allowed.
- 6) ☒ Claim(s) 7 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Allowable Subject Matter

1. Applicant is advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account. Prosecution on the merits of this application is reopened on claim 7 considered unpatentable for the reasons indicated below.

Claim Objections

2. Claim 1 is objected to because of the following informalities: recitation of "aperture" should be replaced with –apertures—to correspond with disclosed invention and antecedent basis provided the term.. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,653,786 to Bopst in view of U.S. Pat. No. 4,770,451 to Souza.

Bopst '786 discloses a three-piece device temporarily mounted to a door and its frame when it is used to hold the door in a locked position including claim limitations of : a "strike plate having a first end" – left end as shown in Fig 1, and a "second end" – the right end, "two pairs of apertures at said first end" – last two apertures on the left side for example where 'end' is broad enough to include portions at the left side, a "boss" – 46, a "bolt" either or both of 42,44.

Bopst '786 does not teach limitation of "magnet". However, Souza '451 teaches a two-piece locking device permanently mounted to a doorframe that can be used to lock the door, that device including a "magnet". It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the locking element (30) of Bopst '786 with a magnet as taught by Souza '451 in order to mount "the lock element in a storage condition out of engagement with the door" as taught by Souza '451 at col 2, line 5. One of ordinary skill in the art would have more than a reasonable expectation of success since the proposed modification would not affect the function of the device of Bopst '786. The magnet of Souza '451, as applied, is inherently capable of "adherence to said bolt and/or said strike plate". It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

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As regards claim 8 and 10, the structure of Bopst '786 does not fairly teach limitation of "U-bolt".

As regards claim 11, limitation of "directly adjacent" is being interpreted in accordance with its plain meaning as requiring that no additional elements be situated between elements that are required to be directly adjacent each other.

Allowable Subject Matter

5. Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 10 and 11 are allowed.

Response to Arguments

7. Applicant's arguments with respect to claim 7 has been considered but are moot in view of the new ground(s) of rejection. Since the new grounds of rejection was not necessitated by the amendment, this Office Action is not made Final.

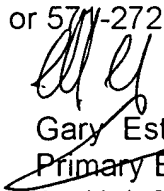
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 571 272-7055. The examiner can normally be reached on M-Thur 7:30-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gary Estremsky
Primary Examiner
Art Unit 3676